
(2001) 04 PAT CK 0065

In the Patna High Court

Case No : C.W.J.C. No. 4686 and 12630 of 1999

Dinanath Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 17, 18

Citation : (2001) 2 BLJR 1082 : (2001) 3 PLJR 469

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—As a common question of law is involved in both these two writ applications, with consent of the parties, they have been heard together at the admission stage and are being disposed of by this common order.

2. On a preliminary objection raised on behalf of respondent No, 5 regarding maintainability of these writ applications for non-joinder of the transferors of the petitioner as party respondents, two separate applications have been filed by the petitioner during course of hearing with a prayer to make them as party.

3. The petitioner after purchasing the land in question by separate sale-deeds on 19-11-1988 subsequently gifted some portion of the land to his sister's son (BHAGINA) on 11-6-1989. After the gift the donee (respondent No. 6) came in possession of those lands.

4. Respondent No. 5 filed two separate petitions for pre-emption u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter to be referred as "the Act") contending, inter alia, that being adjoining Raiyat of certain lands in question, he was entitled for pre-emption. These two application gave rise to Ceiling Case No. 14 and 15 of 1989-90. The Additional Collector Incharge Land Ceiling after hearing the parties rejected the

claim of respondent No. 5 and dismissed the pre-emption applications. Being aggrieved respondent No. 5 moved the Appellate Authority and the authority set aside the order and allowed pre-emption in favour of respondent No. 5. The petitioner impugned the said order before the Board of Revenue but without success. The Appellate Authority and the Board of Revenue were of the opinion that as the petitioner transferred the land in question to respondent No. 6 on 11-8-1989, the transfer was bad as before the statutory period of 90 days was over the transfer was made. The petitioner, thus, aggrieved has moved this Court in these writ applications.

5. First argument of learned Senior Counsel for the petitioner is that both the Appellate Authority as well as the Board of Revenue erred in law by allowing the pre-emption in favour of respondent No. 5 because in view of the Supreme Court decision in the case of *Gokul Mahto v. State Bank of Bihar and Ors.* AIR 1999 SCW 1027 applications u/s 16(3) by respondent No. 5 of gifted land for pre-emption was not maintainable.

6. Learned Counsel for respondent No. 5 has tried to distinguish the said decision by submitting that in the case before the Supreme Court there was no allegation that the gift was Benami or a sham document, whereas in the present case the Appellate Authority has considered this aspect of the matter and, as such, the Supreme Court decision is not applicable in the present case.

7. Before advertng to this argument, it is pertinent to mention here that before the Additional Collector respondent No. 5 made the transferors of the petitioner as parties and in appeal as well as before the Board of Revenue, the petitioner also made them party respondents. However, from the petition filed during course of hearing I find that by inadvertence the petitioner failed to make his transferors as party respondents in these writ applications. These facts have not been controverted by the Counsel for respondent No. 5. In such view of the matter for the ends of justice, I allow those petitions by permitting the petitioner to make his transferors as party respondents.

8. In the case of *Gokul Mahto*" (supra), the Hon"ble Supreme Court considered the provisions of Sections 16, 17 and 18 of the Act and has come to the conclusion that sub-Clause (3) of Section 16 cannot be applied to cases of gift. In that case the Supreme Court noticed that the purchaser made the gift to his own sister and the gift was for the purpose of construction of a house.

9. Though learned Counsel for respondent No. 5 has tried to impress upon the Court that the deeds of gift were sham and fargi transaction but there is a clear finding of the Additional Collector (first Court) that in his pre-emption application the pre-emptor no where has alleged that the deeds were either Benami or a sham document. The first Court also held that no such evidence was produced to show that gift deeds were sham documents. At this juncture, it is to be noted that the Counsel for respondent No. 5 failed to produce a copy of the pre-emption application when asked for and his only submission is that from the

order of the Appellate Authority it is apparent that this point was considered. This Court feels that the observations of the Appellate Authority in this regard without any basis will be of no help to respondent No. 5. It is well settled that when such point is taken, the same must be proved by cogent evidence. Thus, in my view, the ratio of the Supreme Court decision squarely covers the point urged by Mr. Choubey.

Neither the Appellate Authority nor the Board of Revenue has applied their mind to this aspect of the matter and has come to an irrelevant conclusion that because the deed of gift was made before 90 days, therefore, the same was hit by the provisions of the Act. Learned Counsel for respondent No. 5 has failed to draw the attention of the Court to any provision of the Act, which restrains the purchaser to transfer his purchased land by gift before 90 days.

On the contrary, Sub-section (3)(i) of Section 16 contemplates that any adjoining land-holder or co-sharer of the transferor shall be entitled to make an application for preemption within three months from the date of registration of the document. Counsel for the contesting respondent is unable to support the reasonings given by the Appellate Authority or the Board of Revenue in this regard.

10. Considering the facts and circumstances of the case, I am of the view that the case of the petitioner is fully supported by the decision of the Supreme Court in Gokul Mahtos case.

11. In the result, these applications are allowed and the impugned orders dated 17-10-1994 and 5-12-1998, as contained in Annexures 4 and 5 are quashed.